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IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2008
No. 08-1243

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THE PEOPLE OF THE STATE OF MICHIGAN,
Petitioner,

vs.

KOBEAY QURAN SWAFFORD
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE MICHIGAN SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

KYM L. WORTHY
Wayne County Prosecuting Attorney

TIMOTHY A. BAUGHMAN*
Chief of Research, Training and Appeals
11th Floor, 1441 St. Antoine
Detroit, Michigan 48226
Phone: (313) 224-5792

* Counsel of Record

STATEMENT OF THE QUESTION

I.

This Court has held that "A detainer is a notification filed with the institution in which a prisoner is serving a sentence, advising that he is wanted to face pending criminal charges in another jurisdiction." Is a document from a state law-enforcement agency notifying the United States Marshal that a federal *pretrial detainee* is wanted to face pending charges a detainer, and if not, does it become a detainer if forwarded by the United States Marshal to the appropriate federal correctional institution after the pretrial detainee is convicted of the pending federal charges?

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IN THE
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THE PEOPLE OF THE STATE OF MICHIGAN,
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PETITION FOR WRIT OF CERTIORARI
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NOW COMES the State of Michigan, by KYM L WORTHY, *Prosecuting Attorney for the County of Wayne*, and TIMOTHY A. BAUGHMAN, *Chief of Research, Training, and Appeals*, and prays that a Writ of Certiorari issue to review the judgment of the Michigan Supreme Court, entered in this cause on March 18, 2009.

OPINIONS BELOW

The original opinion of the Michigan Court of Appeals is unpublished, and appears as Appendix A. That's court's opinion on remand appears as Appendix B. The opinion of the Michigan Supreme Court appears as Appendix C.

STATEMENT OF JURISDICTION

This Court's jurisdiction is invoked under 28 USC §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article I, Section 10, Clause 3, of the U.S. Constitution provides in pertinent part that "No State shall, without the consent of Congress ... enter into any Agreement or Compact with another State."

Article III(a) of the Interstate Act on Detainers (MCL 780.601) provides in pertinent part:

> Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate

court of the prosecuting officers' jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint: Provided that for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. . . .

Article V(c) of the Interstate Act on Detainers (MCL 780.601) provides, in pertinent part:

> If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in Article III or Article IV hereof, the appropriate court of the jurisdiction where the indictment, information or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

Statement of Material Facts and Proceedings

Respondent was charged with Murder in the 1st Degree. Before trial he filed a motion to dismiss based upon a violation of the Interstate Agreement on Detainers (IAD), MCL § 780.601 et seq.

Respondent was charged in a warrant which was issued on April 13, 2004. On May 28, 2004, Respondent was arrested and charged in federal court in Tennessee with Bank Robbery. On June 1, 2004, Petitioner filed a notice (a "hold")[1] with the United States Marshal's Office in Tennessee that Respondent was wanted to face pending charges in Michigan. See appendix D. On November 19, 2004, Respondent was sentenced to a term of incarceration to the United States Department of Justice, Bureau of Prisons, and was imprisoned in the custody of the Bureau of Prisons in Beckley, West Virginia.

The hold filed against Respondent was forwarded, apparently by the United States Marshal, to Respondent's place of incarceration, and on March 2, 2005, it appears that a prison official spoke by telephone with a paralegal in Petitioner's Office who, according to a notation by that official, "verified the request to lodge a detainer." See Michigan Supreme Court opinion, appendix C, footnote 1. Petitioner did not file any document purporting to be a detainer as to Respondent with the United States Bureau of Prisons, Beckley FCI, or any other federal prison or correctional institution. On March 7, 2005, Petitioner received a request by respondent for disposition of

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1. For want of a better term, and to distinguish this document from an IAD (Interstate Act on Detainers) detainer, Petitioner will refer to this document as a "hold."

the Michigan charges. Acting on this request, on June 15, 2005 Petitioner signed a form indicating a purpose to bring respondent to trial "within the time specified in Article III(a) of the Agreement on Detainers." Respondent was arraigned in Michigan on October 6, 2005.

Respondent moved to dismiss charges for failure to bring him to trial within 180 days of receipt of his request for disposition of the charges. The trial court granted the motion, but on Petitioner's appeal the Michigan Court of Appeals reversed, finding that the filing with the United States Marshal was not a "detainer" as respondent was not then serving a term of imprisonment, so that the Act was never triggered. See Appendix A. The Michigan Supreme Court remanded for further consideration (in the meantime, Respondent was tried and convicted of first-degree murder).[2] On remand, the Michigan Court of Appeals held again that because Petitioner had never filed a detainer with the institution in which respondent was serving a term of incarceration, the Act was never triggered.

On March 18, 2009, the Michigan Supreme Court reversed. The court held that given the use of the passive voice in the statute ("has been lodged"), the document notifying that the person in custody is wanted to answer on existing charges in that jurisdiction need *not* be filed after the individual in custody has commenced a term of imprisonment, but constitutes a "detainer" within the meaning of the Act that simply has been *forwarded* by the custodian of the pretrial detainee to the place of imprisonment

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2. That trial was had while a timely application in the Michigan Supreme Court was pending is itself problematic, but not relevant to the issue here.

(assuming the pretrial detainee is convicted), thereby triggering the Act's requirements. See appendix C. In other words, the hold filed against the pretrial detainee is actually an IAD detainer that the custodian of the pretrial detainee"lodges"by forwarding it to the imprisoning institution if the pretrial detainee is convicted.

Because Petitioner believes that the Michigan Supreme Court's construction conflicts with the construction of the Act by this Court and other courts, Petitioner seeks certiorari.

Reasons for Granting the Writ

A. The Question Begging of the Michigan Supreme Court Opinion

In this case Petitioner filed a document with the United State's Marshal—a hold[3]—regarding a federal pretrial detainee, indicating that he was wanted to face criminal charges in Wayne County, Michigan. The question is whether such a document filed with the custodian of a pretrial detainee *is* a detainer within the meaning of the Interstate Act on Detainers (IAD). Petitioner has argued not. A "detainer" is a term of art, and when used in the IAD means, according to this Court, "a request filed by a criminal justice agency with the institution in which a prisoner is incarcerated, asking that the prisoner be held *for the agency*, or that the agency be advised when the prisoner's release is imminent." *Fex v. Michigan*, 507 U.S. 43, 44, 113 S.Ct. 1085, 1087, 122 L.Ed. 2d 406 (1993) (emphasis supplied).

The Michigan Supreme Court in its opinion begged this question in its discussion. That court expressed the view that the legislative "use of the passive voice makes *when* the detainer was lodged irrelevant so long as it was lodged before the defendant requested a final disposition" (emphasis in the original). Slip opinion, at 8. Continuing in this vein, the court stated that it matters not whether a "detainer" (within the meaning of the IAD) is "initially filed with another institution," as long as it "nevertheless reaches the institution in which the prisoner is serving his sentence." Slip opinion, at 12.

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3. See footnote 1.

Assumed in the Michigan Supreme Court's discussion is that a detainer within the meaning of the IAD *was involved* in this case, the question being the legal effect and consequences of its filing at a place other than the place of imprisonment, and at a time before there was even a conviction. But the question is whether both the time and the place of the filing, as well as by whom the "filing" is made, matter with regard to whether the document filed *is* a detainer within the meaning of the IAD, a question the Michigan Supreme Court never answered. The court assumed from the outset that the document—the hold—filed with the Marshal's Office when Respondent was a federal pretrial detainee was an IAD detainer, though the IAD is, as Petitioner will show, absolutely inapplicable to pretrial detainees. The question cannot be begged, and its answer shows that the IAD was never triggered here.

B. A "Detainer" (Or Hold) Is Not A Detainer Within the Meaning of the IAD Unless and Until Filed with the Imprisoning Institution by the Requesting Jurisdiction or Agency

Authority is unanimous that a document filed with an institution holding a pretrial detainee notifying that institution that the detainee is wanted to answer for charges pending in another jurisdiction (that is, the jurisdiction sending the notice) is, whatever its label or form, *not* a detainer as that term is employed in the IAD; to avoid confusion, Petitioner refers to this sort of document as a "hold." See e.g. *United States v Pardue*, 363 F.3d 695 (CA 8, 2004); *United States v Muniz*, 1 F.3d 1018 (CA 10, 1993); *People v. Walton*, 167 P.3d 163, 165 (Colo.App. 2007); *Christian v. United States*, 394 A.2d 1, 40 (D.C.1978); *People v. Reyes*, 179 P.3d 170, 174

(Colo.App.,2007). Indeed, if the detainee is acquitted of the pending charges, the mechanism of the IAD cannot be employed to send him back to the requesting jurisdiction, as the IAD is simply never triggered. Thus, the "when and the where" of the filing is critical to determining whether the document filed *is*, in fact, an IAD detainee, as is the "who"; that is, by whom the purported filing was made.

The use of the passive voice in the legislation will not carry the weight assigned to it by the Michigan Supreme Court here. "The boy was bitten by the dog" is an example of the passive voice, the active voice being "The dog bit the boy." But even with the passive voice it is clear that the actor was the dog and the receiver of the dog's action (biting) was the boy. Here the statute says that "Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which *a detainer has been lodged* against the prisoner, he shall be brought to trial within one hundred eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officers' jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint" (emphasis supplied). The Michigan Supreme Court viewed the use of the passive voice as meaning that *"when* the detainer was lodged [is] irrelevant as long as it was lodged before the defendant requested a final disposition." This is true so far as it goes—*if* what is filed *is* a detainer. But the question is whether a hold filed against someone who is not a "prisoner serving a sentence" is a

detainer, and whether such a hold, if forwarded to the place of imprisonment by someone other than the jurisdiction which filed it, is transformed by that forwarding into an IAD detainer.

There is nothing wrong with the use of the passive voice in the statutory language quoted above. The statutory focus is on that which is to occur when a prison inmate requests disposition on charges contained in a detainer that "has been lodged." But the statute could just as easily have been written to say "Whenever during the continuance of a term of imprisonment a party state *lodges a detainer* regarding any untried indictment, information or complaint against a person who has entered upon a term of imprisonment in a penal or correctional institution of a party state, he shall be brought to trial within one hundred eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officers' jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint." It is clear that the statute contemplates—being a compact among states (and including the federal government)—that the "lodging" entity be the party state where untried charges are pending. And case law so refers to the lodging of the detainer; indeed, this Court has defined a detainer as "a request filed by a criminal justice agency with the institution in which a prisoner is incarcerated, asking that the prisoner be held *for the agency* [that is, the agency filing the request], or that the agency be advised when the prisoner's release is imminent" (emphasis supplied). *Fex*, supra. See also *United States v Mauro,* 436 U.S. 340, 98 S.Ct. 1834, 56 L.Ed.2d 329 (1978); *Carchman v Nash*, 473 U.S. 716, 105 S.Ct. 3401, 87 L.Ed.2d 516

(1985). A detainer is a request, then, that the prisoner be held *for the party state filing the detainer.* If the document, whatever its label, is *not* filed by a party state requesting the prisoner be held *for* the party state, it is not a detainer. The hold against the federal pretrial detainee was forwarded by the United States Marshal to the Bureau of Prisons. It was never filed by the party state where the charges were pending, and thus it was never a detainer.

Other jurisdictions have reached this conclusion. In *Headrick v. State,* 816 So.2d 517, 524 (Ala.Crim.App.,2001) the court held that "we cannot agree with Headrick that the hold became a detainer upon his conviction and sentence in federal court. The hold was filed with the United States Marshal. . . ." The Maine Supreme Court in *State v. Herrick,* 686 A.2d 602 (Me.1996) held that a "detainer" (or "hold") filed against a pretrial detainee does not become a detainer under the IAD once that individual is convicted and sentenced: "The letter sent by [Maine authorities] in December 1994 was not a 'detainer' for the purposes of the [Agreement] because Herrick was not yet serving a prison sentence. . . .Herrick's attempts to invoke his rights under the [Agreement] prior to May 1995 did not trigger the 180 day time limit contained in Article III because there was no *effective* detainer lodged against him at that time" (emphasis added). Similarly, the Kansas Supreme Court in *State v. Hargrove,* 45 P.3d 376, 383 (Kan.,2002) concluded that "Pretrial detainees are not under the protection of the Agreement. A detainer filed prior to sentencing is not one that effectively invokes the provisions of the Agreement. Once sentencing and service of that sentence occurs, then the provisions of the Agreement may become effective and can be invoked. In our present case, the

detainer filed against Hargrove was filed prior to sentencing. Therefore, it was ineffective under the Agreement and it did not invoke the protection of the Agreement."

C. Conclusion

The "where," "when," and "who" in the filing of a hold are critical to a determination of whether that hold is a particular kind of hold; that is, a detainer under the *Interstate Act on Detainers*. Where filed by a party state against a pretrial detainee in custody in another party state, the hold is not a detainer, nor does it become one by the fact of the ultimate conviction of the pretrial detainee. Nor does the forwarding of that hold by the custodian of the pretrial detainee to the prison authorities in that jurisdiction constitute an IAD detainer "lodged by" a party state. The Michigan Supreme Court has erred in finding to the contrary, its ruling conflicting with authority from this Court and with that of other jurisdictions.

The IAD was thus never triggered in this case. This is not to say the situation was well handled. Petitioner is tempted to follow the lead of the Michigan Supreme Court and allow that "mistakes were made," but it is more precise to say that Petitioner (and others) made mistakes. The Marshal should not have forwarded the hold to the Bureau of Prisons (a notification to the jurisdiction—Wayne County, Michigan—which had placed the hold would have been appropriate). The Bureau of Prisons should not have treated the hold as a detainer, and when the Bureau called Petitioner's office the paralegal should not have been asked to "verify" the detainer (none existed) and should not have done so, but should have then filed one. When the Bureau

sent Respondent's request for disposition purporting to be under the Act, Petitioner's office, rather than responding as it did, should have answered that no detainer had been filed and filed one. But the question is not whether this matter was mishandled, or whether individuals and entities acted "as though" under the Act. The question is whether *under the statute* the Act was triggered by the filing of a detainer, and it was not (if, in these circumstances, the party state with pending charges wished to obtain custody of the inmate based on the forwarded hold, the inmate would surely be able to resist on the ground that no detainer had been filed).

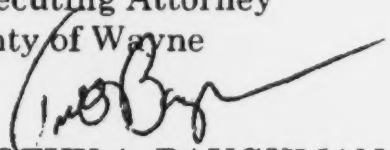
The remedy under the Act is draconian—dismissal of charges with prejudice, here in a murder case. The Act must be actually triggered, then, and not "thought to be." The matter is not one of assessing blame for the errors made here, but of whether a detainer was filed. Petitioner never lodged a detainer—never filed a detainer "with the institution in which a prisoner is incarcerated, asking that the prisoner be held for Petitioner, or that Petitioner be advised when the prisoner's release was imminent. Rather, the Marshal forwarded to the Bureau of Prisoners the pretrial hold filed by Petitioner, and when the Bureau of Prisons treated that hold as a detainer Petitioner mistakenly proceeded in that fashion. But the Act was not triggered, and dismissal of the first-degree murder charges is not required by the Act.

Relief

Wherefore, the Petitioner requests that certiorari be granted.

Respectfully submitted,

KYM L. WORTHY
Prosecuting Attorney
County of Wayne



TIMOTHY A. BAUGHMAN
Chief of Research,
Training and Appeals
1441 St. Antoine
Detroit, MI 48226
313 224-5792

Appendix A: Origianl Court of Appeals Opinion
Court of Appeals of Michigan.

PEOPLE of the State of Michigan, Plaintiff-Appellant,
v.
Kobeay Quran SWAFFORD, Defendant-Appellee.

Docket No. 268499.

March 27, 2007.

Wayne Circuit Court; LC No. 05-010897-01.

Before: ZAHRA, P.J., and BANDSTRA and OWENS, JJ.

PER CURIAM.

The prosecutor appeals as of right from a circuit court order of dismissal for failure to comply with the interstate agreement on detainers (IAD), MCL 780.601 *et seq.* We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with first-degree premeditated murder, MCL 750.316(1)(a), assault with intent to commit murder, MCL 750.83, and possession of a firearm during the commission of a felony, MCL 750.227, arising out of a shooting that occurred in April 2004. Defendant was arrested in Tennessee on federal charges in May 2004. The Wayne County prosecutor sent the United States Marshal Service a notice of detainer on June 1, 2004. Defendant pleaded guilty to the federal charges in September 2004, and was sentenced to prison in November 2004.

Following his imprisonment, defendant was notified of the detainer. He requested disposition of the outstanding charges and his request was received by the prosecutor's office and the court clerk's office on March 7, 2005. Defendant was not arraigned on the outstanding charges until November 3, 2005. He argued that because he was not tried within 180 days after the clerk's office and the prosecutor's office received his request for disposition, the court lost jurisdiction and the case must be dismissed. The trial court agreed and dismissed the case.

The trial court's ruling on a motion to dismiss is reviewed for an abuse of discretion. *People v. Stone,* 269 Mich.App 240, 242; 712 NW2d 165 (2005). The trial court's interpretation and application of a statute is reviewed de novo. *Id.*

"The IAD is a uniform law which prescribes procedures by which a prisoner may demand the prompt disposition of charges pending against him in a state other than the one in which he is imprisoned and prescribes procedures by which a state may obtain, for trial, a prisoner who is incarcerated in another state." *People v. Malone,* 177 Mich.App 393, 396; 442 NW2d 658 (1989). "The purpose of the IAD is to require states to dispose of detainers in an expeditious manner in order to prevent interference with a prisoner's participation in programs of treatment and rehabilitation ." *People v. Monasterski,* 105 Mich.App 645, 652-653; 307 NW2d 394 (1981). Article III governs the prisoner's right to demand disposition of charges. It provides in part:

> Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any

> untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officers' jurisdiction written notice of the place of his imprisonment and his request for final disposition to be made of the indictment, information or complaint.... [MCL 780.601, art III(a).]

The IAD does not apply to a person who is incarcerated, but is not actually serving a term of imprisonment, e.g., a person in jail pending trial or a parolee awaiting revocation. *Monasterski, supra* at 653; *People v. Wilden (On Rehearing),* 197 Mich.App 533, 539; 496 NW2d 801 (1992). Thus, a detainer filed against a jail inmate before he begins serving a prison sentence is insufficient to implicate the IAD. *Monasterski, supra; Wilden, supra.* Accord *Bruce v. State,* 998 S.W.2d 91, 94 (Mo App, 1999). Because the IAD was not implicated when the detainer was filed, the trial court abused its discretion in dismissing the charges for a violation of the IAD.

Reversed and remanded. We do not retain jurisdiction.

Appendix B: Opinion of the Michigan Court of Appeals On Remand

Court of Appeals of Michigan.

PEOPLE of the State of Michigan, Plaintiff-Appellant,
v.
Kobeay Quran SWAFFORD (ON REMAND), Defendant-Appellee.

Docket No. 268499.

March 18, 2008.

Before: Judges ZAHRA, P.J., and BANDSTRA and OWENS, JJ.

PER CURIAM.

In its initial appeal in this case, the prosecution challenged the trial court's dismissal of charges of first-degree premeditated murder, MCL 750.316(1)(a), assault with intent to murder, MCL 750.83, and possession of a firearm during the commission of a felony ("felony-firearm"), MCL 750.227, that had been filed against defendant Kobeay Quran Swafford. In our previous opinion in this case, we reversed the trial court's dismissal of these charges and remanded the case to the trial court. *People v. Swafford,* unpublished opinion per curiam of the Court of Appeals, issued March 27, 2007 (Docket No. 268499). Defendant filed for leave to appeal our decision with our Supreme Court. In

lieu of granting leave to appeal, our Supreme Court vacated our decision and remanded the case to us "for reconsideration of the Interstate Agreement on Detainers issue in light of the documentation that the defendant attaches to his application for leave to appeal and motion in [the Supreme Court]." *People v. Swafford,* 480 Mich. 881, 738 N.W.2d 233 (2007) .[FN1] After considering our Supreme Court's ruling and the suggestions raised by Justice Corrigan in her concurring statement, we again reverse the trial court's dismissal of the charges against defendant.

FN1. Our Supreme Court denied leave to appeal in all other respects. *Swafford, supra,* 480 Mich. 881, 738 N.W.2d 233.

I. Factual Background

On April 13, 2004, the Wayne County Prosecutor's Office ("prosecutor's office") filed a complaint charging defendant with the premeditated murder of Dorian Myles, the assault with intent to murder of Sean Phillips, and felony-firearm. On the same day, a warrant was issued for defendant's arrest. In May 2004, defendant was arrested in Tennessee on federal charges of bank robbery. The prosecutor's office sent a detainer against defendant to the United States Marshal for the state of Tennessee on June 1, 2004.[FN2] Defendant pled guilty to the bank robbery charge and was sentenced to 37 months' imprisonment in a federal penitentiary on November 19, 2004.

FN2. A copy of this detainer, along with several other documents pertinent to this appeal, have not been included in the lower

court record and were first submitted by defendant in his motion for leave to appeal our original ruling in this case to our Supreme Court. Because the Michigan Court Rules specify that appeals to this Court are heard on the original record, they prohibit us from expanding the record on appeal. MCR 7.210(A). Similarly, appeals before our Supreme Court are heard on the original record. MCR 7.311(A). However, pursuant to MCR 7.316(A)(4), our Supreme Court has the discretion to "permit the transcript or record to be amended by correcting errors or adding matters which should have been included." We presume that our Supreme Court's order that we reconsider "the Interstate Agreement on Detainers issue in light of the documentation that the defendant attaches to his application for leave to appeal and motion in this Court" is an exercise of this discretion. *Swafford, supra,* 480 Mich. 881, 738 N.W.2d 233. Therefore, we will consider these documents in our opinion in this case.

At some point, presumably after defendant's sentence was entered, the original detainer presented to the United States Marshal was apparently sent to federal prison authorities. A copy of the detainer originally sent to the United States Marshal and later submitted by defendant to our Supreme Court in his motion for leave to appeal bears a notation dated March 2, 2005, and states, "originals ordered and on the way." In a subsequent memorandum, also not included in the lower court record and first submitted by defendant in his application for leave to appeal to our Supreme Court, defendant requested information regarding the status of the March 2 document. In the

disposition section of the memorandum form, a federal prison official wrote the following reply:

> I verified the request to lodge a detainer per policy. [R]equest for originals, is normal policy as we need originals for the file, not necessary as the request was verified.

On March 2, 2005, defendant signed a document indicating that representatives of the Federal Bureau of Prisons informed him of the first-degree murder charge pending against him. That day, the federal inmate systems manager also contacted the prosecutor's office, offering to temporarily transfer custody of defendant to state authorities for the purpose of prosecuting the criminal charges filed by the prosecutor's office against defendant. Defendant included in his application for leave to appeal a copy of a request, dated March 2, 2005, asking for final disposition of the first-degree murder charge. He also submitted a document, dated March 2, 2005, that informed the prosecutor's office that a detainer had been filed against defendant in the office's favor on the first-degree murder charge and that defendant was scheduled for release from federal prison on February 1, 2007. The prosecutor's office received notice of these documents by certified mail on March 7, 2005.

Defendant submitted another document, dated June 4, 2005, and not included in the lower court record, indicating that a federal inmate systems manager had advised the prosecutor's office that it had not yet received certain Interstate Agreement on Detainers (IAD) forms and warned the office that almost half the 180-day period in which the office

could bring defendant to trial after receipt of defendant's request for final disposition had elapsed. On June 15, 2005, the prosecutor apparently signed a certification "in connection with the request for custody," in essence agreeing that defendant would be incarcerated during the pendency of state proceedings and then returned to the federal institution.[FN3] Defendant also submitted two IAD forms executed in June 2006 with his application for leave to appeal. Form VI indicated that the state would take custody of defendant, and Form VII indicated that the prosecutor's office accepted temporary custody of defendant and would bring defendant to trial "within the time specified in Article III(a) of the Agreement on Detainers."

> FN3. Defendant submitted a completed copy of this form with his application for leave to appeal to the Supreme Court. The copy of the form included in the lower court file is not filled in.

In a letter dated September 16, 2005, a federal systems inmate manager advised the prosecutor's office that 180 days had elapsed since defendant's request for disposition and that defendant would be notified that he could petition for dismissal of the charges against him. The release authorization of the Bureau of Prisons indicates that defendant was released to state custody on October 5, 2005. Notably, next to "Detainer" a box for "yes" is marked, and "IAD" is typed in the box labeled "method."

The trial court accepted defendant's argument that he was entitled to dismissal of the charges against him based on a violation of the Interstate

Agreement on Detainers (IAD), MCL 780.601 *et seq.*, and it dismissed the first-degree murder, assault with intent to murder, and felony-firearm charges on January 26, 2006. On March 27, 2007, we issued an unpublished, per curiam opinion reversing the dismissal of charges against defendant and remanding the case to the trial court. Defendant subsequently filed for leave to appeal before our Supreme Court. In the meantime, defendant was tried by a jury and convicted on all charges on September 12, 2007. He was sentenced to life imprisonment on September 27, 2007.

On September 21, 2007, after defendant was convicted but before his sentencing, our Supreme Court issued an order vacating our opinion and remanding "for reconsideration of the [IAD] issue in light of the documentation that the defendant attaches to his application for leave to appeal and motion in this Court." Therefore, in remanding this case, our Supreme Court directed us to consider the documents attached to defendant's filings before our Supreme Court when making our ruling.

II. Analysis

The IAD, MCL 780.601, art III(a), states in pertinent part:

> Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial

> within one hundred eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officers' jurisdiction written notice of the place of his imprisonment and his request for final disposition to be made of the indictment, information or complaint....[FN4]

FN4. A "state," for purposes of the IAD, includes the United States of America. MCL 780.601, art II(a).

In our previous opinion in this case, we cited *People v. Monasterski,* 105 Mich.App. 645, 307 N.W.2d 394 (1981), and *People v. Wilden (On Rehearing),* 197 Mich.App. 533, 496 N.W.2d 801 (1992), for the proposition that "[t]he IAD does not apply to a person who is incarcerated, but is not actually serving a term of imprisonment, e.g., a person in jail pending trial or a parolee awaiting revocation." We then held that "a detainer filed against a jail inmate before he begins serving a prison sentence is insufficient to implicate the IAD." We concluded that because the IAD was not implicated when the detainer was filed, no violation of the IAD occurred.

In a lengthy concurrence to the Supreme Court order vacating our opinion and remanding for reconsideration of the IAD issue, Justice Corrigan raised the following questions:

> (1) Was the panel correct that *People v. Monasterski, [supra],* and *People v. Wilden (On Rehearing), [supra],* hold that "a detainer filed against a jail

> inmate before he begins serving a prison sentence is insufficient to implicate the IAD," and, if so, (2) are the holdings in *Monasterski* and *Wilden* consistent with the language of article III of the IAD? [*Swafford, supra,* 480 Mich. 881, 738 N.W.2d 233.]

After summarizing this Court's holdings in *Monasterski* and *Wilden,* Justice Corrigan noted,

> Because the defendants in *Monasterski* and *Wilden* never began terms of imprisonment before being extradited on the detainers, it appears that those holdings apply only in cases in which the defendant was not imprisoned when he sent to the prosecutor written notice of his place of imprisonment and a request for a final disposition of the indictment, information, or complaint. Article III(a) clearly requires that the defendant be imprisoned at the time he cause the notice to be delivered to the prosecutor.... In the instant case, defendant was imprisoned in the federal system after the alleged detainer was lodged. During his imprisonment, he caused written notice of the place of his imprisonment to be delivered to the prosecutor. Thus, *Monasterski* and *Wilden* may be distinguishable from the instant case. [*Id.* at 882, 496 N.W.2d 801.]

Justice Corrigan further noted that if this Court again interprets *Monasterski* and *Wilden* to mean that the IAD never applies when a detainer is filed before imprisonment, then these cases would

appear to be inconsistent with article III(a) of the IAD. *Id.* Because article III(a) concerns a detainer that "has been lodged against the prisoner," Justice Corrigan proffered,

> The use of the phrase "has been lodged" in article III seems to mean that the detainer could have been lodged before the defendant was imprisoned. In other words, under article III(a), the IAD applies when a defendant who enters into a term of imprisonment has had a detainer lodged against him, whether the detainer was lodged before or during the defendant's imprisonment. [*Id.*]

She also noted that this interpretation is consistent with articles I and IV of the IAD, and that nothing in the IAD requires that the detainer be lodged during defendant's imprisonment for the IAD to apply. *Id.*

However, Justice Corrigan advised that a conclusion that *Monasterski* and *Wilden* are applicable but were wrongly decided would constitute a novel interpretation of article III, resulting in a broader interpretation of the application of the IAD. *Id.* Thus, she requested, "[b]ecause prosecutors up to this point have reasonably relied on the narrower application of the IAD under *Monasterski* and *Wilder* [sic, *Wilden*], the panel should consider whether to give such a holding limited retroactive effect." *Id.* at 882-883, 496 N.W.2d 801.

Although the lower court record includes copies of the Bureau of Prison's letter to defendant informing him of the charges against him and of the bureau's and defendant's communications with the prosecutor's office requesting disposition of the charged offenses, the lower court record does not

include a copy of a detainer sent by the prosecutor's office to the prison in which defendant was incarcerated. Accordingly, any determination regarding the manner in which the Bureau of Prisons official who had custody of defendant was informed of the charges against defendant would be based on speculation and the assertions of the parties.

When our Supreme Court, in an exercise of its discretion, expanded the record on appeal in this case, it included in this expanded record a copy of a June 1, 2004, letter from the prosecutor's office to the United States Marshal. This letter requested that the United States Marshal "enter the attached documents as a detainer against this defendant," although it does not indicate what these attached documents are. We were unable to locate, either in the lower court record or in defendant's submissions either to us or to our Supreme Court, any communication from the prosecutor's office to either the Bureau of Prisons or any prison or jail in which defendant was held informing him of the charges pending against him.

However, both defendant and Justice Corrigan assume that at the time defendant requested disposition of his case, a detainer from the prosecutor's office that was cognizable under the IAD was on file with the prison. Apparently, the detainer to which they refer is the one filed by the prosecutor's office with the United States Marshal, which through an unidentified process was sent to the Federal Bureau of Prisons. If we were to assume that this detainer is valid, we would be compelled to find that the provisions of the IAD were violated and that the convictions against defendant must be vacated. Therefore, if we assume that the detainer is valid and adopt Justice Corrigan's analysis, we must conclude

that because defendant was imprisoned when he requested that the prosecutor's office expedite the disposition of his case, the prosecutor's office violated the provisions of the IAD when it failed to bring him to trial within 180 days. Under this scenario, the fact that the prosecutor lodged the detainer before defendant was imprisoned would be irrelevant.

Monasterski, supra, does not conflict with Justice Corrigan's interpretation of article III(a) of the IAD.[FN5] The *Monasterski* Court recognized that a letter sent to a sheriff in Elkhart County, Indiana, was consistent with the congressional definition of a detainer, although the defendants had not yet been imprisoned and were held in a county jail pending extradition. *Id.* at 652, 307 N.W.2d 394. After noting that the purpose of the IAD was "to require states to dispose of detainers in an expeditious manner in order to prevent interference with a prisoner's participation in programs of treatment and rehabilitation," the *Monasterski* Court concluded that the IAD did not apply because the defendants were still in the county jail and, therefore, had not yet embarked upon such a program. *Id.* at 652-653, 307 N.W.2d 394.

> FN5. Regardless, we note that *Monasterski* was issued before November 1, 1990, and therefore is not binding on this Court. MCR 7 .215(J)(1).

Further, this Court's holding in *Wilden, supra,* is not directly on point. In *Wilden, supra* at 538, 496 N.W.2d 801, the defendant argued that his return to a federal correctional facility before his trial on state charges violated the IAD. The *Wilden* Court found that detainers had been filed against the defendant on April 18 and September 21, 1990, when he was in

jail under federal custody for an alleged parole violation, but before his parole had been revoked. *Id.* at 538-539, 496 N.W.2d 801. The *Wilden* Court then held that the defendant's transfer from the county jail to a federal correctional facility did not violate the IAD because his parole had not been revoked at the time of the transfer and, therefore, he had not yet entered upon a term of imprisonment. *Id.* at 539, 496 N.W.2d 801. In making this ruling, the Court noted, "The IAD does not apply to pretrial detainees or to parolees awaiting revocation because neither has actually 'entered upon a term of imprisonment.' " *Id.* Further, the *Wilden* Court noted the absence of evidence indicating that defendant was participating in a rehabilitation or treatment program. *Id.* at 540, 496 N.W.2d 801.

In this case, defendant was being held on federal bank robbery charges at the time the prosecutor's office initially filed the detainer with the United States Marshal on June 1, 2004. At this point, the IAD did not apply under *Monasterski* or *Wilden* because defendant was not imprisoned and involved in a rehabilitation or treatment program. However, presuming that the detainer is valid, because the detainer was still pending against defendant when he entered a term of imprisonment and he requested disposition of the charges against him during his imprisonment, the prosecutor's office would have been required to bring him to trial within 180 days of delivery of his request for final disposition. MCL 780.601, art III(a). The IAD would have been invoked when defendant requested disposition of the charges, because at that point a detainer would have been lodged against defendant on an untried pending complaint and, contrary to the situations addressed in *Monasterski* and *Wilden,* defendant was imprisoned at the time he requested disposition. [FN6]

Therefore, if we were to find the detainer to be valid, we would be compelled to hold that the prosecutor's office violated the provisions of the IAD when it failed to bring defendant to trial within 180 days of receiving his request for disposition of the charges against him and, consequently, we would be required to vacate defendant's convictions .[FN7]

FN6. We note, however, that nothing in the documents that defendant submitted with his application indicate whether he was involved in treatment or rehabilitation programs in federal prison at the time he requested disposition. Because the purpose of the IAD is to "secure[e] speedy trials of persons incarcerated in other jurisdictions" in order to prevent the obstruction of prisoner treatment and rehabilitation programs, MCL 780.601, art I, and defendant was apparently not involved in any such programs, the prosecutor's failure to bring defendant to trial in a timely manner did not undermine the purpose of the IAD. See *Wilden, supra* at 540, 496 N.W.2d 801.

FN7. We also note that *Monasterski* and *Wilden* do not stand for the proposition that the IAD is implicated only when a detainer is filed after the defendant has been imprisoned. Rather, they establish that the IAD is not implicated when the defendant is not serving a term of imprisonment when he requests expedient disposition of a case, regardless of the filing of a detainer. Thus, we conclude that a holding by this Court that the IAD applies even when the detainer was lodged before the defendant's imprisonment would *not* be a

novel interpretation of article III.

> Justice Corrigan directs us to consider *People v. Williams,* 475 Mich. 245, 716 N.W.2d 208 (2006), for a determination whether our holding should be given limited retroactive effect. However, we need not consider this question because the holdings in *Monasterski* and *Wilden* are consistent with the view that, if the detainer in question is valid, the IAD would apply to this defendant because he invoked it when imprisoned with a pending untried complaint on which a detainer had been lodged.

However, we conclude that the detainer sent by the prosecutor's office to the United States Marshal on June 1, 2004, did not constitute a valid detainer for purposes of the IAD. The IAD does not define the term "detainer." Nonetheless, in several cases, both this Court and our Supreme Court have adopted a definition of "detainer" set forth in *United States v. Mauro,* 436 U.S. 340, 359, 98 S.Ct. 1834, 56 L.Ed.2d 329 (1978). Our Supreme Court has noted, "A detainer is a notification filed with the institution in which a prisoner is serving a sentence, advising that he is wanted to face pending criminal charges in another jurisdiction." *People v. McLemore,* 411 Mich. 691, 692 n. 2, 311 N.W.2d 720 (1981), quoting *Mauro, supra* at 359 (internal quotations omitted). See also *Wilden, supra* at 537, 496 N.W.2d 801; *People v. Shue,* 145 Mich.App. 64, 70, 377 N.W.2d 839 (1985); *Monasterski, supra* at 651-652, 307 N.W.2d 394; *People v. Browning,* 104 Mich.App. 741, 752, 306 N.W.2d 326 (1981). The *McLemore* Court also noted the following definition of "detainer" set forth by the Sixth Circuit:

> In *United States v. Dixon,* 592 F.2d 329, 332, fn. 3 (C.A.6, 1979), the Court describes a detainer as simply a notice filed with the institution in which a prisoner is serving a sentence, advising that the prisoner is wanted to face pending criminal charges elsewhere, and requesting the custodian to notify the filing jurisdiction prior to releasing the prisoner. Filing a detainer is an informal process that generally can be done by any person who has authority to take a prisoner into custody. Furthermore, a detainer remains lodged against a prisoner without any action being taken on it. [*McLemore, supra* at 692 n. 2, 311 N.W.2d 720 (internal quotations omitted).]

In *People v. Gallego,* 199 Mich.App. 566, 574, 502 N.W.2d 358 (1993), this Court noted, "While there is no exact definition of the term 'detainer,' it has generally been recognized to mean written notification filed with the institution in which a prisoner is serving a sentence advising that the prisoner is wanted to face pending charges in the notifying state."

The prosecutor's office never sent a detainer to the Bureau of Prisons, where defendant was serving a sentence; it only sent a detainer to the United States Marshal for the state of Tennessee. The letter that the prosecutor's office filed with the United States Marshal on June 1, 2004, does not meet the definition of "detainer" set forth by this Court and our Supreme Court for the purpose of construing the term as used in the IAD.

All definitions of "detainer" adopted by this Court and our Supreme Court note that a detainer is a notification *filed with the institution in which a prisoner is serving a sentence.* Black's Law Dictionary (8th ed) defines "file" as "To deliver a legal document to the court clerk or record custodian for placement into the official record." However, the lower court record does not indicate, and the parties do not present evidence to establish, that the prosecutor's office delivered a notification indicating that defendant had criminal charges pending against him with any institution in which he was serving a sentence. The prosecutor's office only delivered notice of the charges pending against defendant to the United States Marshal, and the parties present no evidence indicating that the United States Marshal ever oversaw an institution in which defendant served a sentence. Further, the parties provide only scant information indicating how the Bureau of Prisons received notification that defendant had outstanding criminal charges in Michigan.

Because the June 1, 2004, letter was not a notification filed with the institution in which defendant was serving a sentence, it was not a detainer for purposes of the definition we are bound to use when interpreting this term in the IAD. The parties provide no evidence establishing that the prosecutor's office filed notification of the charges pending against defendant with the Bureau of Prisons. Accordingly, the notification that the prosecutor's office sent to the United States Marshal is not a valid detainer and the parties present no evidence indicating that a valid detainer was ever filed. Because no valid detainer was ever filed against defendant, the provisions of the IAD do not apply and

the trial court erred when it dismissed the charges against defendant on this basis.[FN8]

> FN8. In a footnote in his brief on appeal, defendant asserts that there is no distinction between the United States Marshal and the Bureau of Prisons, suggesting that they are both part of the Department of Justice. To the extent this might be construed as an argument that the detainer was therefore lodged with the Bureau of Prisons, it has no merit. In 28 USC 566(b), Congress provided:
>
> The United States marshal of each district is the marshal of the district court and of the court of appeals when sitting in that district, and of the Court of International Trade holding sessions in that district, and may, in the discretion of the respective courts, be required to attend any session of court.
>
> Thus, the United States Marshal is an agent of the courts, not of the Justice Department or the Bureau of Prisons.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

ZAHRA, J. (dissenting).

I respectfully dissent from the majority's conclusion that the correspondence sent by the prosecutor's office to the United States Marshal on June 1, 2004, is not a valid detainer for purposes of the IAD. I conclude this correspondence became a valid detainer for purposes of the IAD no later than March 2, 2005, when it accompanied defendant to

federal prison, was verified, and the prosecutor was notified that defendant was requesting disposition on the outstanding charges filed against him. Because I conclude the detainer is valid, I must, as noted in the majority opinion at page 8, "find that the provisions of the IAD were violated and that the convictions against defendant must be vacated." I would affirm the lower court's dismissal of the charges against defendant and remand this matter to the trial court with instructions that defendant's convictions be vacated.

The majority concludes the June 1, 2004 correspondence is not a valid detainer under the IAD because the prosecutor did not file it with the institution in which defendant was serving his federal sentence and there is "scant information indicating how the Bureau of Prisons received notification that defendant had outstanding criminal charges in Michigan." Majority opinion, p. 12. Although the June 1, 2004, correspondence was filed with the U.S. Marshal before defendant was imprisoned, it is without dispute that the correspondence followed defendant to federal prison, where a federal prison official verified "the request to lodge a detainer," the prosecutor's office caused the clerk of the court to certify the warrant and complaint, and the federal prison official subsequently sent the prosecutor a letter stating that "[a] detainer has been filed against this subject in your favor." Defendant's Application for Leave to Appeal to the Supreme Court, Exhibit 1.

The federal institution in which defendant was imprisoned regarded the detainer as lodged once it was verified, as evidenced by the sending of the detainer letter. Moreover, the prosecutor's conduct supports the conclusion that it also viewed the

detainer as being properly lodged, since it did nothing incongruous with the notice that a detainer had been filed in its favor. To the contrary, the prosecutor ultimately filed all the documents that would be consistent with the understanding that an IAD detainer had been lodged with the federal prison.

Having concluded the detainer against defendant was properly lodged with the Bureau of Prisons, defendant was entitled pursuant to art III(a) of the IAD, MCL 780.601, to be brought to trial within 180 days of the date he requested disposition of the charges that were the subject of the detainer. Here, the prosecutor failed to comply with requirements of the IAD. For these reasons, I would affirm.

Appendix C: Opinion of the Michigan Supreme Court

Supreme Court of Michigan.

PEOPLE of the State of Michigan, Plaintiff-Appellee,
v.
Kobeay Quran SWAFFORD, Defendant-Appellant.

Docket No. 136751.

March 18, 2009.

Opinion

MARKMAN, J.

We granted leave to appeal in this case to consider whether the Interstate Agreement on Detainers (IAD), MCL 780.601, requires that a detainer be lodged at the institution where the defendant is incarcerated, and, if so, whether there was sufficient evidence in this case that the detainer was properly lodged. The trial court granted defendant's motion to dismiss the charges with prejudice as a result of the prosecutor's failure to bring defendant to trial within 180 days of receiving defendant's request for a final disposition, in violation of Article III(a) of the IAD. The Court of Appeals reversed, holding that the IAD is not applicable because the prosecutor lodged the detainer against the defendant with the United States Marshals rather than the federal prison in which defendant was incarcerated. However, there is no

language in the IAD that indicates that it is only applicable when the detainer was originally lodged with the institution in which the defendant is incarcerated, and in this case it is undisputed that the institution in which defendant was incarcerated received the detainer. The clear language of the IAD states that if a "detainer has been lodged against the prisoner," and the prosecutor fails to bring a defendant to trial within 180 days of receiving the defendant's request for a final disposition made while the defendant is serving a term of imprisonment, the court " *shall* enter an order dismissing the [complaint] with prejudice," MCL 780.601 (emphasis added). That is precisely what happened in this case. Therefore, we have no choice but to reverse the Court of Appeals and reinstate the trial court's order dismissing the charges with prejudice. However harsh and inflexible a remedy for failure to comply with the IAD this may be adjudged, it is plainly what our Legislature requires.

I. FACTS AND PROCEDURAL HISTORY

Defendant was charged in Michigan with first-degree murder, assault with intent to commit murder, and possession of a firearm during the commission of a felony. He was subsequently arrested on an unrelated federal bank robbery charge in Tennessee. On June 1, 2004, the Wayne County Prosecutor's Office (hereinafter referred to as "the prosecutor") sent a written detainer against defendant to the U.S. Marshals in Tennessee. Defendant pleaded guilty to the federal charges and was sentenced to federal prison on November 19, 2004. On March 2, 2005, the federal prison authorities where defendant was imprisoned (hereinafter referred to as "the Bureau of Prisons")

verified the detainer that was lodged against defendant with the prosecutor.[FN1] The Bureau of Prisons provided the prosecutor and the court clerk with notice of defendant's request for disposition of the Michigan charges.[FN2] This notice was received by the prosecutor and the court clerk on March 7, 2005.[FN3] On June 15, 2005, the prosecutor signed an "Agreement on Detainers" that states, "I propose to bring this person to trial on the indictment, information or complaint named in the offer within the time specified in Article III(a) of the Agreement on Detainers." [FN4] However, defendant was not arraigned in Michigan until October 6, 2005, which everybody agrees was more than 180 days after the prosecutor received defendant's request for a final disposition.

FN1. In a correspondence with defendant, a prison official stated, "I verified the request to lodge a detainer...." Stamped on a copy of the letter that accompanied the detainer is a notation dated March 2, 2005, indicating that the detainer was verified with a paralegal in the Wayne County Prosecutor's extradition unit.

FN2. This notice states:

The above named defendant is requesting disposition on the outstanding charges you have filed against him as a detainer.... An inmate requesting disposition of detainers in accordance with Article III of the Interstate Agreement on Detainers Act must be brought to trial within 180 days of your receipt of this request.

At the same time, the Bureau of Prisons also submitted a document to the prosecutor that provides, "A detainer has been filed against this subject in your favor for: 1st Degree Murder, we will again notify you approximately 60 days prior to actual release." On June 4, 2005, the Bureau of Prisons sent a letter to the prosecutor that provides:

The above named inmate has requested disposition on outstanding charges which were filed against him as a detainer.... As you know, once an inmate requests disposition under the IAD they must be brought to trial within 180 days of your receipt of the request. Ninety of the allotted 180 days elapsed effective June 25, 2005.

FN3. *Fex v. Michigan,* 507 U.S. 43, 52; 113 S Ct 1085; 122 L.Ed.2d 406 (1993), provides that the IAD's 180-day time limit begins running when the prosecutor receives the defendant's request for trial.

FN4. At the top of this form, it states, "This form should only be used when an offer of temporary custody has been received as the result of a *prisoner's* request for disposition of a detainer." This form also indicates that it was "[i]n response to [the Bureau of Prisons'] letter of March 2, 2005." On September 16, 2005, when the prosecutor failed to bring defendant to trial within 180 days, the Bureau of Prisons sent the prosecutor a letter stating:

> The above named inmate requested disposition of the outstanding charges that you have filed against him as a detainer on 03-02-2005. Under Article III of the Interstate Agreement on Detainers, an inmate must be brought to trial within 180 days after he requests disposition and the forms are received by the appropriate officials. Our records indicate the forms required under the provisions of the IAD were received and signed for by your office on 03-07-2005.... Since 180 days have elapsed since you received this request for disposition, we have advised, by copy of this letter to the inmate, that he may petition the appropriate court for dismissal of the outstanding charges.
>
> Finally, the Bureau of Prisons' "Release Authorization" indicates a "Release Date" of "10-05-05"; under the word "Method" appear the initials "IAD"; and after "Detainer," the "Yes" box is checked.

Defendant then filed a motion to dismiss the charges on the ground that the prosecutor had failed to bring him to trial within 180 days of receiving defendant's request for a final disposition in violation of Article III(a) of the IAD, MCL 780.601. The trial court granted this motion and dismissed the charges with prejudice. The prosecutor appealed, and the Court of Appeals reversed, holding that the IAD does not apply because defendant was not serving a term of imprisonment when the detainer was lodged against him. *People v.. Swafford,* unpublished opinion per curiam of the Court of Appeals, issued March 27, 2007 (Docket No. 268499) (*Swafford I*).

Defendant filed a timely application for leave to appeal in this Court. We vacated the Court of Appeals judgment and remanded the case to that court for reconsideration in light of the documentation that defendant had attached to his application for leave to appeal in this Court. *People v. Swafford,* 480 Mich. 881 (2007).[FN5]

FN5. In a concurring statement, Justice Corrigan raised specific questions for the Court of Appeals to address. Specifically, she asked:

(1) Was the panel correct that *People v. Monasterski,* 105 Mich.App 645 (1981), and *People v. Wilden (On Rehearing),* 197 Mich.App 533 (1992), hold that "a detainer filed against a jail inmate before he begins serving a prison sentence is insufficient to implicate the IAD," and, if so, (2) are the holdings in *Monasterski* and *Wilden* consistent with the language of article III of the IAD?

After the Court of Appeals rendered its first decision, but before this Court vacated that decision, defendant was brought to trial, convicted as charged, and sentenced to life in prison. Defendant should not have been brought to trial at that time. The Court of Appeals decision reversing the trial court's dismissal of charges and remanding the case for trial had not taken effect, because defendant had filed a timely appeal to this Court. MCR 7.215(F)(1)(a). Moreover, during the pendency of a timely appeal to this Court, a Court of Appeals decision remanding to a lower court for further proceedings is

> automatically stayed, unless the Court of Appeals or this Court orders otherwise. MCR 7.302(C)(5). Neither this Court nor the Court of Appeals ordered further proceedings to begin notwithstanding defendant's timely appeal. Accordingly, the trial court did not have proper jurisdiction to bring defendant to trial or convict defendant.

On remand, the Court of Appeals, in a split decision, again reversed the trial court's dismissal of the charges, holding that the IAD did not apply because the prosecutor had not delivered the detainer to the institution in which defendant was serving his sentence, i.e., the Bureau of Prisons. *People v. Swafford (On Remand),* unpublished opinion per curiam of the Court of Appeals, issued March 18, 2008 (Docket No. 268499) (*Swafford II*). However, the dissenting judge concluded that

> the correspondence sent by the prosecutor's office to the United States Marshall on June 1, 2004 ... became a valid detainer for purposes of the IAD no later than March 2, 2005, when it accompanied defendant to federal prison, was verified, and the prosecutor was notified that defendant was requesting disposition on the outstanding charges filed against him. [*Id.* at 1 (Zahra, J., dissenting).]

Defendant again filed an application for leave to appeal in this Court, and this time, we granted defendant's application for leave to appeal. *People v. Swafford,* 482 Mich. 1015 (2008).

II. STANDARD OF REVIEW

This case involves the interpretation of the Interstate Agreement on Detainers Act, MCL 780.601. Questions of statutory interpretation are questions of law that this Court reviews de novo. *People v. Osantowski,* 481 Mich. 103, 107; 748 NW2d 799 (2008).

III. ANALYSIS

"Forty-eight States, [including Michigan,] the Federal Government, and the District of Columbia ... have entered into the Interstate Agreement on Detainers...." *Alabama v. Bozeman,* 533 U.S. 146, 148; 121 S Ct 2079; 150 L.Ed.2d 188 (2001). The IAD "creates uniform procedures for lodging and executing a detainer, *i.e.,* a legal order that requires a State in which an individual is currently imprisoned to hold that individual when he has finished serving his sentence so that he may be tried by a different State for a different crime." *Id.*[FN6] Article I of the IAD indicates that its purpose is to "encourage the expeditious and orderly disposition" of "charges outstanding against ... prisoner[s]." MCL 780.601. Article III(a) of the IAD provides, in pertinent part:

> FN6. Article II(a) of the IAD defines "state" to include "the United States of America." MCL 780.601.

> Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought

to trial within one hundred eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officers' jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint.... [*Id.*]

Article V(c) of the IAD states, in relevant part:

> [I]n the event that an action on the indictment, information or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in Article III ..., the appropriate court of the jurisdiction where the indictment, information or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect. [*Id.*]

In this case, the Wayne County Prosecutor lodged a detainer against defendant, and while defendant was serving a term of imprisonment at a federal institution, defendant made a written request with the prosecutor for a final disposition of the pending Michigan charges. Thereafter, the prosecutor failed to bring defendant to trial within 180 days as is required by Article III(a) of the IAD. Article V(c) of the IAD, MCL 780.601, states that if a trial is not brought within the period provided in Article III(a), "the ... court ... *shall* enter an order dismissing the [complaint] with prejudice...." (Emphasis added.) Therefore, the trial court in this case properly dismissed the charges with prejudice.

In its first opinion, the Court of Appeals reversed the trial court on the basis that the IAD was not applicable because defendant was not serving a term of imprisonment when the prosecutor lodged the detainer against him. However, the IAD does not require that the detainer be lodged while the defendant is serving a term of imprisonment. Instead, Article III(a) requires that "during the continuance of the term of imprisonment," a charge must be "pending ... on the basis of which a detainer *has been* lodged." (Emphasis added.) The Legislature's use of the passive voice makes *when* the detainer was lodged irrelevant as long as it was lodged before the defendant requested a final disposition. Furthermore, "a detainer *remains* lodged against a prisoner without any action being taken on it." *People v. McLemore,* 411 Mich. 691, 692 n 2; 311 NW2d 720 (1981) (citation and quotation marks omitted; emphasis added). See also *United States v. Mauro,* 436 U.S. 340, 360; 98 S Ct 1834; 56 L.Ed.2d 329 (1978). Therefore, the IAD applies as long as a "detainer has been lodged against the [defendant]," and the defendant, while serving a term of imprisonment in one party state, has charges pending against him in another party state, and causes a written request for a final disposition to be delivered to the prosecutor and the court. Upon receiving that request, the prosecutor must bring the defendant to trial within 180 days. That is, although the defendant must be serving a term of imprisonment when the out-of-state charges are pending and when he files a request for a final disposition, the defendant does not have to be serving a term of imprisonment when the detainer is first lodged. Because a detainer had been lodged against defendant, and because he was serving a term of imprisonment when he requested a final disposition

on the pending out-of-state charges, the prosecutor was required to bring defendant to trial within 180 days of receiving defendant's request for trial.

As discussed earlier, this Court vacated that Court of Appeals judgment and remanded the case to the Court of Appeals for consideration of defendant's documentation. On remand, the Court of Appeals again reversed the trial court's dismissal of the charges. However, this time it did so on a different rationale. The Court of Appeals correctly recognized that the two cases that it had previously relied upon-*People v. Monasterski,* 105 Mich.App 645; 307 NW2d 394 (1981), and *People v. Wilden (On Rehearing),* 197 Mich.App 533; 496 NW2d 801 (1992)-are readily distinguishable from the instant case. [FN7] It further recognized that if the prosecutor in this case had sent the detainer to the Bureau of Prisons, "the fact that the prosecutor lodged the detainer before defendant was imprisoned would be irrelevant" and "we would be compelled to find that the provisions of the IAD were violated and that the convictions against defendant must be vacated." *Swafford II, supra* at 5.

FN7. In *Monasterski,* the defendants argued that the IAD had been violated because their trial was not commenced within 120 days of their arrival in Michigan, as required by Article IV(c) of the IAD. However, the Court of Appeals held that because the defendants never began serving terms of imprisonment in Indiana (they were simply held in a county jail in Indiana pending extradition), the IAD was not even applicable. *Monasterski,* 105 Mich.App at 653. In *Wilden,* the defendant argued that his return to a federal correctional facility on September 21, 1990, before trial, violated the IAD because Article IV(e) of the

IAD provides that

> [i]f trial is not had on any ... complaint ... prior to the prisoner's being returned to the original place of imprisonment ... such ... complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice. [MCL 780.601.]

However, the Court of Appeals held that because the defendant had not "entered upon a term of imprisonment" as of September 21, 1990, the IAD was not even applicable. *Wilden,* 197 Mich.App at 539. Moreover, the Court of Appeals in *Wilden* recognized that the prosecutor had lodged detainers against the defendant. *Id.* at 538. This recognition undercuts the prosecutor's argument in the instant case that communications sent before a prisoner begins a term of imprisonment are not detainers.

Unlike *Monasterski* and *Wilden,* the instant case involves Article III(a) of the IAD, which provides that when a defendant is serving a term of imprisonment in one state and another state has lodged a detainer against the defendant, the latter state has 180 days to bring the defendant to trial after it receives the defendant's written request for a final disposition of the outstanding charges. And, unlike the defendants in *Monasterski* and *Wilden,* the defendant in the instant case had begun to serve a term of imprisonment in the federal prison on the critical date, i .e., when

defendant requested a final disposition of the outstanding charges.

However, the Court of Appeals concluded that because the prosecutor never sent a detainer *directly* to the Bureau of Prisons, where defendant was serving his sentence, no valid detainer under the IAD was ever filed. It explained that, although the IAD does not define the term "detainer," several cases have defined the term "detainer" as a " 'notification filed with the institution in which a prisoner is serving a sentence....' " *McLemore,* 411 Mich. at 692 n 2, quoting *Mauro,* 436 U.S. at 359 (quotation marks omitted). The Court of Appeals held that because the prosecutor sent the detainer to the U.S. Marshals rather than the Bureau of Prisons, the detainer was not valid, and, thus, the IAD did not apply.

The dissenting judge, on the other hand, recognized that,

> [a]lthough the June 1, 2004, correspondence was filed with the U .S. Marshal before defendant was imprisoned, it is without dispute that the correspondence followed defendant to federal prison, where a federal prison official verified "the request to lodge a detainer," the prosecutor's office caused the clerk of the court to certify the warrant and complaint, and the federal prison official subsequently sent the prosecutor a letter stating that "[a] detainer has been filed against this subject in your favor." [*Swafford II, supra* at 1 (Zahra, J., dissenting) (citation omitted).]

The dissenting judge emphasized that

> the "federal institution in which defendant was imprisoned regarded the detainer as lodged once it was verified, as evidenced by the sending of the detainer letter" and "the prosecutor's conduct supports the conclusion that [she] also viewed the detainer as being properly lodged," because "the prosecutor ultimately filed all the documents that would be consistent with the understanding that an IAD detainer had been lodged with the federal prison." *Id.* at 1-2. Accordingly, the dissent concluded that the detainer had been properly lodged with the Bureau of Prisons and that the IAD was violated when defendant was not brought to trial within 180 days.

We agree with the dissenting judge. Contrary to the conclusion of the Court of Appeals majority, there is no requirement in the IAD that the prosecutor initially file the detainer with the institution in which the prisoner is serving his sentence. Article III(a) simply states that it is applicable where "a detainer has been lodged against the prisoner." MCL 780.601. There is no language in the IAD that requires the prosecutor to initially lodge the detainer with any specific institution. Although caselaw generally describes a detainer as a " 'notification filed with the institution in which a prisoner is serving a sentence,' " *McLemore,* 411 Mich. at 692 n 2, quoting *Mauro,* 436 U.S. at 359, these descriptions are merely meant to provide guidance on the meaning of "detainer" in the absence of a statutory definition. These cases do not support the proposition that a detainer that the prosecutor

initially filed with another institution, i.e., the U.S. Marshals, but which nevertheless reaches the institution in which the prisoner is serving his sentence, is not a valid detainer for purposes of the IAD.[FN8] Further, as discussed earlier, nothing in the actual language of the IAD requires the prosecutor to initially file the detainer with the institution in which the defendant is serving his sentence. Instead, Article III(a) simply requires the prosecutor to bring the defendant to trial within 180 days when "a detainer has been lodged against the prisoner" and, while serving a term of imprisonment, the defendant causes to be delivered to the prosecutor and the court a written request for a final disposition. In this case, (1) "a detainer [had] been lodged against [defendant]," and (2) while he was serving a term of imprisonment, defendant caused to be delivered to the prosecutor and the court a written request for a final disposition. Therefore, the IAD was breached when defendant was not brought to trial within 180 days.[FN9]

FN8. The question at issue in both *McLemore* and *Mauro* was whether a writ of habeas corpus constitutes a detainer for purposes of the IAD. Further, *McLemore,* on which the prosecutor relies because it states that a detainer is a " 'notification filed with the institution in which a prisoner is serving sentence,' " *McLemore,* 411 Mich. at 692 n 2, quoting *Mauro,* 436 U.S. at 359, also states that "the provisions of the [IAD] apply if a participating jurisdiction which has untried charges against a prisoner lodges a detainer *with the jurisdiction where the prisoner is incarcerated* ...." *Id.* at 694, citing *Mauro* (emphasis added). In the instant case, there is no question that the prosecutor lodged a

detainer with the jurisdiction in which defendant was incarcerated when it lodged the detainer with the U.S. Marshals and where defendant was incarcerated in a federal prison.

FN9. The Court of Appeals noted that "the parties provide only scant information indicating *how* the Bureau of Prisons received notification that defendant had outstanding criminal charges in Michigan." *Swafford II, supra* at 8 (emphasis added). However, *how* the Bureau received notice is not particularly relevant. All that is relevant for purposes of the IAD is that the Bureau received notice and passed it on to defendant, who, while serving a term of imprisonment, then filed a written request for a final disposition with the prosecutor and the court.

Finally, the facts of this case make it clear that both parties invoked the IAD for purposes of bringing defendant tc trial. The institution in which defendant was serving his sentence received the prosecutor's detainer, the institution confirmed the detainer with the prosecutor, the prosecutor expressly agreed to bring defendant to trial within 180 days of receiving defendant's request for trial as is required by Article III(a), and the prosecutor obtained custody of defendant through the IAD. In a correspondence with defendant, a federal prison official stated, "I verified the request to lodge a detainer...." Stamped on the letter that accompanied the June 1, 2004, detainer is a notation dated March 2, 2005, indicating that a federal prison official verified the detainer against defendant with the extradition unit of the Wayne County Prosecutor. The Bureau of Prisons further provided the prosecutor and the court clerk with

notice of defendant's request for a final disposition of the Michigan charges that stated:

> The above named defendant is requesting disposition on the outstanding charges you have filed against him as a detainer.... An inmate requesting disposition of detainers in accordance with Article III of the Interstate Agreement on Detainers Act must be brought to trial within 180 days of your receipt of this request.

It is undisputed that the prosecutor received this notice on March 7, 2005. The Bureau of Prisons also submitted a document to the prosecutor that provides, "A detainer has been filed against this subject in your favor for: 1st Degree Murder, we will again notify you approximately 60 days prior to actual release." Subsequently, the Bureau of Prisons sent a letter to the prosecutor that stated:

> The above named inmate has requested disposition on outstanding charges which were filed against him as a detainer.... As you know, once an inmate requests disposition under the IAD they must be brought to trial within 180 days of your receipt of the request. Ninety of the allotted 180 days elapsed effective June 25, 2005.

In response, the prosecutor signed an "Agreement on Detainers" that states, "I propose to bring this person to trial on the indictment, information or complaint named in the offer within the time specified in Article III(a) of the Agreement on Detainers." This agreement also states that "[t]his

form should only be used when an offer of temporary custody has been received as the result of a prisoner's request for disposition of a detainer" and that "[this form is] in response to [the Bureau of Prisons'] letter of March 2, 2005." When the prosecutor failed to bring defendant to trial within 180 days, the Bureau of Prisons sent the prosecutor a letter stating:

> The above named inmate requested disposition of the outstanding charges that you have filed against him as a detainer on 03-02-2005. Under Article III of the Interstate Agreement on Detainers, an inmate must be brought to trial within 180 days after he requests disposition and the forms are received by the appropriate officials. Our records indicate the forms required under the provisions of the IAD were received and signed for by your office on 03-07-2005.... Since 180 days have elapsed since you received this request for disposition, we have advised, by copy of this letter to the inmate, that he may petition the appropriate court for dismissal of the outstanding charges.

Finally, the Bureau of Prisons' "Release Authorization" indicates a "Release Date" of "10-05-05"; under the word "Method" appear the initials "IAD"; and after "Detainer," the "Yes" box is checked.

In this case, it is utterly clear that the prosecutor lodged a detainer against defendant, that both the Bureau of Prisons and defendant were aware of this detainer, that the prosecutor was aware that the Bureau of Prisons was in possession of the detainer, and that defendant caused a written

request for a final disposition to be delivered to the prosecutor and the court while defendant was serving a term of imprisonment. Therefore, the IAD is clearly applicable, and Article III(a) was indisputably violated when defendant was not brought to trial within the proper time frame. Because Article V(c) expressly states that if the defendant is not "brought to trial within the period provided in Article III ..., the appropriate court ... shall enter an order dismissing the [charges] with prejudice," the trial court here properly dismissed the charges against defendant. "Any other reading of [the IAD] would allow the Government to gain the advantages of lodging a detainer against a prisoner without assuming the responsibilities that the [IAD] intended to arise from such an action." *Mauro,* 436 U.S. at 364. The prosecutor here failed to satisfy these responsibilities.

IV. CONCLUSION

The clear language of the IAD, MCL 780.601, states that if the prosecutor fails to bring a defendant to trial within 180 days of receiving the defendant's request for a final disposition made while the defendant is serving a term of imprisonment if a "detainer has been lodged against the prisoner," the court "shall enter an order dismissing the [complaint] with prejudice." Because that is precisely what happened in this case, we reverse the Court of Appeals and reinstate the trial court's order dismissing the charges with prejudice.[FN10] However harsh and inflexible a remedy for failure to comply with the IAD this may be adjudged, it is plainly what our Legislature requires.

FN10. Because we are reinstating the trial court's order dismissing the charges against defendant, defendant's convictions and

sentences arising from these charges must be set aside. Defendant's motion to remand for an evidentiary hearing is denied because it is now moot.

MARILYN KELLY, C.J., MICHAEL F. CAVANAGH, ELIZABETH A. WEAVER, MAURA D. CORRIGAN, ROBERT P. YOUNG, JR., and DIANE M. HATHAWAY, JJ., concur.

EXHIBIT C

Detainer from Wayne Prosecutor to U.S. Marshal,
State of Tennessee, dated June 4, 2008

Appendix D

COUNTY OF WAYNE
OFFICE OF THE PROSECUTING
ATTORNEY

June 1, 2008

U.S. MARSHALL
STATE OF TENNESSEE

Re: KOREAN O. SWAFFORD Dob: 9-7-74 Case No. 04-58986

Greetings

Please enter the attached documents as a detainer against this defendant.

If you have any further questions, please let me know.

Sincerely yours,

ROBERT J. PURDUE
Paralegal, Extradition Unit
313.224.8886-p/ 313.224.8224-f

Verified via Robert Purdue
Date: 3-2-05 Time: 8:15
By:
Telephone # (313) 224-8886
Original ordered and on the way.
3-2-05

434

BEST AVAILABLE COPY

EXHIBIT G

Detainer Action Letter from Federal Bureau of Prisons to Wayne County Prosecutor, dated March 2, 2005

APPENDIX E

BP-S394.058 DE .ER ACTION LETTER CDFRM
FEB 94 SEC 97

U.S. DEPARTMENT OF JUSTICE — FEDERAL BUREAU OF PRISONS

Wayne County Prosecuting Attorney Frank Murphy Hall of Justice 1441 Saint Antoine Detroit MI 48226	Federal Correction Institution Beckley P.O.Box 1280 Beaver, WV 25813 March 2, 2005
Ref: Lodging of Detainer	Inmate name: Swafford, Kobesy — Reg. No. 16706-075 ; DOB 09-07-1974

The below checked paragraph relates to the above named inmate:

This inmate may have pending charges in the _____ Will you please investigate this report and advise what disposition, if any, has been made of the case. If subject is wanted by your department and you wish a detainer placed, it will be necessary for you to forward a certified copy of your warrant to us along with a cover letter stating your desire to have it lodged as a detainer, or indicate you have no further interest in subject.

XXX A detainer has been filed against this subject in your favor for: 1st Degree Murder, we will again notify you approximately 60 days prior to actual release. Projected release date is 02-01-2007

Enclosed is your detainer warrant. Your detainer against the above named has been removed in compliance with your request.

Your detainer warrant has been removed on the basis of the attached . Notify this office immediately if you do not concur with this action

Your letter dated requests notification prior to the release of the above named prisoner. Our records have been noted. Tentative release date at this time is .

I am returning your on the above named inmate who was committed to this institution on to serve for the offense of . If you wish your filed as a detainer, please return it to us with a cover letter stating your desire to have it placed as a hold or indicate you have no further interest in the subject.

The above named inmate has been received at . Your detainer/notification request has been forwarded.

XXX Other:Should you have any questions, please call 304-252-9758.

Sincerely, Scott Trainum, LIE

For: Michael J. Snow,
Inmate Systems Manager

2 Signed Record Copies - 1 Addressee, 1 - Judgment & Commitment File; Copy - Inmate; Copy - Central File (Section 1); Copy - Correctional Services Department

(This form may be reproduced via WP) (Replaces BP-394(58) dtd October 1988)

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